

# **EXHIBIT M**

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1 C O N F I D E N T I A L

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3 SEPTEMBER 11th VICTIMS' :

4 COMPENSATION FUND HEARING :

5 APPELLANT: ARTHUR HARRIS :

6 - - - - - X

7 Washington, D.C.

8 Wednesday, April 30, 2003

9 Telephone hearing in the above-entitled  
10 matter, before JACQUELINE E. ZINS, ESQ., Deputy  
11 Special Master, taken at the offices of The Feinberg  
12 Group, 1120 20th Street, N.W., Suite 740, Washington,  
13 D.C. at 4:05 p.m., Wednesday, April 30, 2003 and the  
14 proceedings being taken down by Stenotype by MARIJANE  
15 SIMON, RDR, and transcribed under her direction  
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1 APPEARANCES (via telephone):

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3

On Behalf of the Witness:

4 JAMES B. THORSEN, ESQ.

5 Thorsen & Scher L.L.P.

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C O N T E N T S

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1 question is what that means in the context of some of  
2 this award is not going to the estate; it is not  
3 estate money per se. And that's, I guess, my  
4 question.

5 MR. THORSEN: Well, what do you mean, "not  
6 estate money"?

7 THE DEPUTY SPECIAL MASTER: Well, the way  
8 our fund works, \$250,000 of the money would flow  
9 through the estate. In other words, were there to  
10 have been a will here --

11 MR. THORSEN: Right.

12 THE DEPUTY SPECIAL MASTER: -- the 250,000  
13 would be distributed pursuant to the estate and  
14 would, for example, go through the will; and without  
15 a will, it would go through --

16 MR. THORSEN: The laws of intestacy.

17 THE DEPUTY SPECIAL MASTER: Intestacy.

18 MR. THORSEN: Okay.

19 THE DEPUTY SPECIAL MASTER: I'm just  
20 looking at the order for a second. Okay?

21 MR. THORSEN: Under the laws of intestate  
22 succession in Virginia, again, Mr. Harris was the  
23 sole distributee.

24 THE DEPUTY SPECIAL MASTER: I understand  
25 that, but I guess I'm looking at the order, and it

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1 says the Court declares that Arthur Harris is the  
2 sole heir at law of the decedent.

3 My question is: In our fund, of this  
4 particular award, \$250,000 of it flows through the  
5 estate, and the remainder of it is economic damages.  
6 I'm trying to see whether or not this order is really  
7 limited to the money that flows through the estate,  
8 the noneconomic damages which is the \$250,000, or  
9 not. So that's my question to you.

10 MR. THORSEN: Well, I don't know how to  
11 answer that because I don't fully understand the  
12 question, frankly.

13 THE DEPUTY SPECIAL MASTER: Let me back up  
14 and say it again.

15 MR. THORSEN: Okay.

16 THE DEPUTY SPECIAL MASTER: Just ask me if  
17 there's something that I'm saying that's unclear.

18 MR. THORSEN: Right.

19 THE DEPUTY SPECIAL MASTER: There are two  
20 components to awards under the Victims' Compensation  
21 Fund. One is the noneconomic component. That  
22 component flows according to the estate which would  
23 either be a will or the intestacy.

24 The Court clearly has said that he would  
25 be, in the Court's view, the person who would take

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1 under the intestate laws.

2           The remainder of the money of this award  
3 is for economic damages and is pursuant to wrongful  
4 death. And my question is whether or not this  
5 Court's order where the Court's appointing Arthur  
6 Harris as the administrator of the estate, and then  
7 the Court is declaring that he's the sole heir at law  
8 of the decedent -- if the Court intended that to also  
9 cover all economic damages for wrongful death.

10           MR. THORSEN: Yes.

11           THE DEPUTY SPECIAL MASTER: That's my  
12 question.

13           MR. THORSEN: Yes, yes, yes. Yes.

14           THE DEPUTY SPECIAL MASTER: And the Court  
15 cited the intestacy code in making its order, did not  
16 cite the wrongful death code.

17           Now, whether the Court sort of understood,  
18 you know, I don't really know, but the order  
19 explicitly is a finding under the intestacy laws, not  
20 under the wrongful death laws.

21           So my question to you is: What do we make  
22 of that? We have two components of this award.

23           MR. THORSEN: This would be my response.  
24 Thank you for explaining it. I would preface my  
25 remark, I wasn't being flip.

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1           THE DEPUTY SPECIAL MASTER: No, no. I  
2 understand that. No, the truth is that the Fund  
3 is -- it's a sui generis creature. It's not  
4 something any of us are used to, believe me. And  
5 everybody needs that explication, because it's not,  
6 on its face, obvious until somebody tells you so.  
7 Not at all.

8           I deal with this every day so I thought  
9 maybe I was not being careful in my description, and  
10 I probably wasn't; so, anyhow, I apologize for that.  
11 But -- so that's my question.

12           MR. THORSEN: Okay. Do you have the  
13 Court's order?

14           THE DEPUTY SPECIAL MASTER: Mm-hmm. I do.

15           MR. THORSEN: I'm looking at the first  
16 page of the Court's order. And, of course,  
17 Mrs. Williams brought the action to have herself  
18 appointed as the administrator and to clarify that  
19 Arthur Harris is not the decedent's heir at law.

20           THE DEPUTY SPECIAL MASTER: Right.

21           MR. THORSEN: The Court refused to do  
22 that.

23           THE DEPUTY SPECIAL MASTER: Right.

24           MR. THORSEN: I don't know. Looking at  
25 the page 2 of the order, again, it says that

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1           Mr. Harris is the sole distributee of her estate. I  
2 know you said 250 of that goes to the estate.

3           THE DEPUTY SPECIAL MASTER: Right.

4 MR. THORSEN: And I thought I had had the  
5 pleadings that were filed in the matter, but under  
6 the wrongful death statute, we read paragraph -- I  
7 mean, Section 53, 8.01-53 --

8 THE DEPUTY SPECIAL MASTER: Yes.

9 MR. THORSEN: -- that defines "class  
10 beneficiaries" and when they're determined.

11 And then there's another section there --  
12 see if I can get to it. The part I was looking for,  
13 Ms. Zins, was the damages section.

14 (Reading): The jury or the Court, as the  
15 case may be, may award damages as it deems fair and  
16 just. The verdict or judgment of the Court trying  
17 the case without a jury shall include but may not be  
18 limited to damages for the following.

19 Do you see that on Section 52?

20 THE DEPUTY SPECIAL MASTER: I don't have  
21 the entire statute in front of me. I just have a  
22 portion of it, and I will get the whole thing --

23 MR. THORSEN: Okay.

24 MR. HARRIS: -- but I'm not sure that I  
25 can pull it up while we're speaking.

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1 MR. THORSEN: Here's what I'm getting at.  
2 It has five different portions.

3 THE DEPUTY SPECIAL MASTER: Mm-hmm.

4 MR. THORSEN: The first one says: Sorrow,  
5 mental anguish; solace, which may include society,  
6 companionship, comfort, guidance, kindly offices, or  
7 advice of the decedent.

8 Two, compensation for reasonably expected  
9 loss of one, (i), income of the decedent; (ii),  
10 services, protection, care, and assistance provided  
11 by the decedent; (iii), expenses for care, the last  
12 hospitalization; (iv), funeral expenses; (v) punitive  
13 damages.

14 My point, I think, would be, we're talking  
15 about the issue of the economic damages; and any  
16 award under the wrongful death statute talks about  
17 the economic damages, and we've done this -- I've  
18 done this in trial matters in wrongful death cases,  
19 put on what the income of the decedent would have  
20 been had they lived and otherwise retired at a normal  
21 age discounted by the present value, actuarial  
22 tables, and everything like that.

23 So, yes, I'm clearly convinced that the  
24 Court in Fairfax, when they entered the award  
25 appointing Mr. Harris as the personal representative,

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1 had in mind his receipt of any economic damages that  
2 would flow from any award based on the fact that the  
3 wrongful death statute talks about including but not  
4 limited to income of the decedent.

5 So that's my best answer.

6 THE DEPUTY SPECIAL MASTER: All right.  
7 MR. THORSEN: Again, that's 8.01-52, Code  
8 of Virginia.  
9 THE DEPUTY SPECIAL MASTER: Okay.  
10 MR. THORSEN: That's the section of -- The  
11 heading on that is, quote, "Amount of Damages."  
12 THE DEPUTY SPECIAL MASTER: Mm-hmm.  
13 MR. THORSEN: Again, included but not  
14 limited to what I've set out.  
15 THE DEPUTY SPECIAL MASTER: Okay. I'll  
16 take a better look at that and discuss this matter  
17 with the Special Master.  
18 Is there anything else that you all wanted  
19 us to take into consideration? We have your  
20 testimony.  
21 MR. THORSEN: Well, I don't know what  
22 is -- I feel somewhat at a disadvantage in this  
23 respect. I don't know what's been said by the other  
24 folks that you've interviewed as to this informal  
25 hearing --

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1 THE DEPUTY SPECIAL MASTER: Mm-hmm.  
2 MR. THORSEN: -- so have I no idea what  
3 they said. I have no idea as to what examination I  
4 would do under opportunity of cross-examination to --  
5 THE DEPUTY SPECIAL MASTER: Right.  
6 MR. THORSEN: -- to either refute or to  
7 call into question what assertions or statements of  
8 facts or claims that they are making. Neither does  
9 my client, because he hasn't heard that, but I would  
10 tell you, I have read their statements, and it's  
11 basically just -- you know, we loved her a lot, and  
12 we should get money. That's fine, but that's not the  
13 law in Virginia.  
14 The law in Virginia in this matter has  
15 been settled by the Fairfax Circuit Court. This was  
16 a proceeding in that court for the appointment of  
17 personal representative to bring -- and/or to bring a  
18 wrongful death action or to collect the funds under  
19 the victims' compensation.

20 Mr. Harris, as personal representative,  
21 thereafter filed a claim with the Compensation Fund  
22 choosing not to go the wrongful death route against  
23 the airlines or anybody else; and because of that,  
24 he's entitled to get the amount of damages, full  
25 amount of damages, that he would otherwise be

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1 entitled to under the Code of Virginia; one, as sole  
2 distributee of the estate and all funds flowing to  
3 the estate whether they're categorized as economic or  
4 noneconomic.

5 Thank you very much for your time,  
6 Mrs. Zins.

7 THE DEPUTY SPECIAL MASTER: Okay. Thank

8 you so much.

9 MR. THORSEN: You've been kind and  
10 patient, and I want to thank Mr. Feinberg's offices,  
11 too, for the donating of their time and energies.

12 THE DEPUTY SPECIAL MASTER: Right. Thank  
13 you so much, and we appreciate your very helpful oral  
14 argument and the testimony. We will be analyzing the  
15 transcript and thinking carefully about this, and  
16 then we will be letting you know what the Special  
17 Master's determination is.

18 MR. THORSEN: Do you have a timetable on  
19 that?

20 THE DEPUTY SPECIAL MASTER: I don't have a  
21 precise timetable, but it will not be a lengthy  
22 period of time, I wouldn't imagine.

23 (Mr. Thorsen laughed.)

24 THE DEPUTY SPECIAL MASTER: Do you want me  
25 to tell you what "lengthy" is?

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1 MR. THORSEN: It's a question by a lawyer,  
2 but I would ask that.

3 THE DEPUTY SPECIAL MASTER: I don't see  
4 this taking several weeks.

5 MR. THORSEN: Okay. Well, several weeks  
6 or 30 days. That's fine. Gives us some idea.

7 THE DEPUTY SPECIAL MASTER: Yes. I do not  
8 think that this is going to take a very -- you know,  
9 extended period of time --

10 MR. THORSEN: Okay.

11 THE DEPUTY SPECIAL MASTER: -- because I  
12 think we have all the information we need. I think  
13 we need to look at the statute a little more  
14 carefully.

15 MR. THORSEN: If you want me to send you  
16 copies of the statute of wrongful death for  
17 Virginia --

18 THE DEPUTY SPECIAL MASTER: No. I can do  
19 that. It's just that I am not known for my terrific  
20 computer skills; and talking and using the computer  
21 at the same time is not my forte, so I will be able  
22 to do this shortly thereafter, but I really can't do  
23 both at once --

24 MR. THORSEN: Right.

25 THE DEPUTY SPECIAL MASTER: -- unlike, you

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1 know, my children and --

2 MR. THORSEN: Right.

3 THE DEPUTY SPECIAL MASTER: -- other  
4 younger people who can do 17 things at once that have  
5 to do with computers. I can't, so I have to focus on  
6 that, pulling the statute up, but I can do that. I  
7 don't need you to do it.

8 MR. THORSEN: On the statute, when you  
9 look at 8.01-52, "Amount of Damages" which I talked

10 about just a moment ago --

11 THE DEPUTY SPECIAL MASTER: Mm-hmm.

12 MR. THORSEN: -- the final paragraph says:

13 Competent expert testimony shall be admissible in  
14 proving the damages recoverable under 2 above.

15 And 2 above is what I told you about  
16 compensation for reasonably expected loss of income,  
17 services, protection, care --

18 THE DEPUTY SPECIAL MASTER: What I'm more  
19 interested in is the section that has to do with  
20 pecuniary loss and the class of people who can take  
21 pecuniary loss.

22 MR. THORSEN: That's Section 53.

23 THE DEPUTY SPECIAL MASTER: Yes. That's  
24 really what I think we need to look at carefully.

25 MR. THORSEN: Yes, and I would again

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1 advocate that since there's no surviving spouse or  
2 children, you move to little i, number two, and it  
3 goes: Parents, brothers and sisters of the decedent  
4 and to any other relatives who primarily were  
5 dependent on the decedent for support and services,  
6 and also a member of the same household as the  
7 decedent.

8 She had nobody living with her. She had  
9 no brothers or sisters; and she had only one parent.  
10 That's Mr. Harris, so --

11 THE DEPUTY SPECIAL MASTER: Okay.

12 MR. THORSEN: Anyway, thank you very, very  
13 much.

14 THE DEPUTY SPECIAL MASTER: Thank you.

15 MR. THORSEN: All right. Arthur, thank  
16 you. We'll talk to you later.

17 MR. HARRIS: Just one question.

18 Your name is Jackie?

19 MR. THORSEN: Zins.

20 THE DEPUTY SPECIAL MASTER: Yes. Z like  
21 zebra, i-n-s.

22 MR. HARRIS: -- i-n-s.

23 THE DEPUTY SPECIAL MASTER: Yes. And I  
24 work with Mr. Feinberg.

25 MR. HARRIS: Okay.

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1 THE DEPUTY SPECIAL MASTER: Okay. I think  
2 I said earlier that he has designated me to hear this  
3 hearing.

4 MR. THORSEN: You did.

5 Thank you, Ms. Zins.

6 THE DEPUTY SPECIAL MASTER: Okay. Thank  
7 you so much.

8 MR. THORSEN: Good day.

9 (Whereupon, at 4:46 p.m., the hearing in  
10 the above-entitled matter was concluded.)

11